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12 UNITED STATES DISTRICT COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15 IN RE TEZOS SECURITIES LITIGATION

16 This document relates to: All Actions

17 Master File No. 17-cv-06779-RS

18 CLASS ACTION

19 **NOTICE OF REQUEST AND REQUEST
FOR JUDICIAL NOTICE IN SUPPORT
OF DEFENDANT TEZOS STIFTUNG'S
MOTION TO DISMISS THE
CONSOLIDATED COMPLAINT**

20 Date: July 19, 2018

21 Time: 1:30 p.m.

22 Dept.: Courtroom 3, 17th Floor

23 Judge: Hon. Richard Seeborg

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1 **NOTICE OF REQUEST AND REQUEST FOR JUDICIAL NOTICE**

2 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that defendant Tezos Stiftung (the “Foundation”) hereby requests
4 that the Court take judicial notice of each of the documents attached as Exhibits B and E through H
5 to the Declaration of Andrew S. Gehring in Support of the Foundation’s Motion to Dismiss the
6 Consolidated Complaint.

7 This request is based on this Notice, the supporting Memorandum of Points and Authorities,
8 the Declaration of Andrew S. Gehring and annexed exhibits, all pleadings, other materials in the
9 record, argument of counsel, and such other matters as the Court may consider.

10 **STATEMENT OF THE ISSUE**

11 1. Whether the Court may take judicial notice of websites and documents available on the internet.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 Pursuant to Federal Rule of Evidence 201, the Foundation respectfully requests that the
14 Court take judicial notice of each of the documents attached as Exhibits E through H to the
15 Declaration of Andrew S. Gehring (“Gehring Decl.”) in support of the Foundation’s Motion to
16 Dismiss the Consolidated Complaint (the “Motion”). These Exhibits are websites and documents
17 that are publicly available on the internet, and judicial notice is therefore appropriate. In addition,
18 although Exhibit B has been incorporated into the complaint by reference, it is both publicly
19 available and legally operative and accordingly may be judicially noticed.

20 On a motion to dismiss, a court may consider items of which it can take judicial notice
21 without converting the motion into one for summary judgment. *See Barron v. Reich*, 13 F.3d 1370,
22 1377 (9th Cir. 1994) (Rule 12(b)(6)); *Huthbart v. News Corp.*, No. CV-13-04253-MWF, 2014 WL
23 12577175, at *2 (C.D. Cal. May 21, 2014) (forum non conveniens). Federal Rule of Evidence
24 201(b) permits the Court to take judicial notice of any fact that is not subject to reasonable dispute
25 because it either “(1) is generally known within the trial court’s territorial jurisdiction; or (2) can be
26 accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”
27 Fed. R. Evid. 201(b). It is well established that courts may take judicial notice of websites and
28 other materials available on the internet under this rule for purposes of “indicating what was in the

1 public realm at the time.” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954,
 2 960 (9th Cir.2010); *see, e.g., McCrary v. Elations Co., LLC*, No. 13–00242–JGB, 2014 WL
 3 1779243, at *1 n.3 (C.D. Cal. Jan. 13, 2014) (taking judicial notice of two internet articles, a
 4 Wikipedia entry, and four journal articles); *Spy Optic, Inc. v. Alibaba.com, Inc.*, 163 F. Supp. 3d
 5 755, 762 (C.D. Cal. 2015) (taking judicial notice of an internet article on bloomberg.com); *Brodsky*
 6 *v. Yahoo! Inc.*, 630 F. Supp. 2d 1104, 1111 (N.D. Cal. 2009) (taking judicial notice of conference
 7 call transcripts, press releases, and news articles).

8 Exhibits E through H are subject to judicial notice because they satisfy the requirements of
 9 Federal Rule of Evidence 201(b). The above Exhibits are all webpages and documents available on
 10 the internet, and therefore constitute “information [] in the public realm.” *McCrary*, 2014 WL
 11 1779243, at *1 n.3. The Foundation seeks to introduce these Exhibits solely for the fact that they
 12 were in existence and publicly available, and not for the truth of the matters asserted therein.
 13 Specifically, Exhibits E, F, G, and H demonstrate that the Tezos Contribution and XTZ Allocation
 14 Terms and Explanatory Notes (the “Contribution Terms”) were mentioned on tezos.ch, Twitter, and
 15 public internet forums.

16 In addition, although the Contribution Terms (Exhibit B to the Gehring Declaration) were
 17 incorporated by reference in the Complaint and therefore may be considered for all purposes on the
 18 Motion, *see Mot.* at n.2, in the alternative, the Foundation requests that the Court take judicial
 19 notice of the Contribution Terms. They were publicly available on tezos.ch and, as a legally
 20 operative document, may be considered for the rights and obligations they convey. *See Koenig v.*
 21 *Bank of Am., N.A.*, No. 13-cv-0693 AWI BAM, 2016 WL 8731110, at *2 (E.D. Cal. Mar. 18, 2016)
 22 (citing *Permito v. Wells Fargo Bank*, No. C-12-00545 YGR, 2012 WL 1380322, at *2 (N.D. Cal.
 23 Apr. 20, 2012)). Accordingly, the Contribution Terms are subject to judicial notice both as
 24 information in the public realm and as a legally operative document.

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1 Dated: May 15, 2018

Respectfully submitted,

2 DAVIS POLK & WARDWELL LLP

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4 By: /s/ Neal A. Potischman

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